



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	30 (Commonwealth Transportation Board)
VAC Chapter Number:	24 VAC 30-41-10 et seq.
Regulation Title:	Rules and Regulations Governing Relocation Assistance
Action Title:	Repeal and Replace an Existing Regulation
Date:	November 13, 2000 – <i>Amended submission per DPB request</i>

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

In acquiring the rights of way necessary for the construction, reconstruction, alteration, maintenance, and repair of the public highways of the Commonwealth, VDOT must often displace individuals, families, businesses, farms, and non-profit organizations. The purpose of the Rules and Regulations Governing Relocation Assistance is to ensure to the maximum extent possible the prompt and equitable relocation and reestablishment of these displacees. To accomplish this purpose, VDOT believes that a uniform policy is necessary.

During 1999, VDOT's Right of Way and Utilities Division prepared a comprehensive revision to the existing regulation, which had not been revised since 1990. Due to the extensive nature of the proposed revisions to the existing regulation, VDOT proposes to repeal the existing regulation and replace it with a new one under the same title. When the agency became aware that the General Assembly was considering

legislation that would affect the content of the regulation, VDOT deferred further work pending a decision by the legislature and the Governor. When the legislation was enacted as Chapter 851 of the 2000 Acts of Assembly, VDOT determined that the existing regulation would need to be amended first, since the replacement regulation would not be ready to be adopted in time. VDOT amended the existing *Rules and Regulations Governing Relocation Assistance* via an Article 2-exempt action, which was effective July 1, 2000. This comprehensive action addressed changes in both federal and state law and updated forms used to administer the regulation. The amendments made at that time affected definitions for the terms “small business” and “state agency;” eliminated internal caps on costs for individual maximum amounts in 24 VAC 30-40-630 under federal law; reduced the list of ineligible reimbursement expenses; increased total maximum amounts for reestablishment expenses from \$10,000 to \$25,000, and increased the maximum for a fixed payment in lieu of actual expenses from \$20,000 to \$50,000. These changes have also been incorporated into the replacement regulation.

VDOT was informed by the Assistant Secretary of Transportation on October 6, 2000, that the Governor’s Office had contacted the Department of Planning & Budget (DPB) to authorize a time extension to proceed with submittal of the replacement regulation and related documentation for an economic impact analysis, and further review by the appropriate authorities.

VDOT believes that the substantial revisions to this policy embodied in the replacement regulation will continue to ensure adequate relocation services and will provide moving, replacement housing, and other expense payments so that individuals will not suffer disproportionate injuries as a result of the highway improvement programs. The contemplated regulatory action amends existing regulations as permitted by federal and state laws and is intended to (i) clarify language, and (ii) streamline the process, thereby fulfilling an important and essential governmental function. In addition, providing a minimum level of decent, safe, and sanitary housing to displacees may improve their living standards, which will help preserve the safety and welfare of the public as a whole.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

This regulation is based on the following federal and state laws:

- Public Law 91-646, as amended (42 USC, § 4601 et seq.) (federal law);

- 49 CFR Part 24 (federal regulation to implement pertinent amendments to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970);
- Code of Virginia - §§ 33.1-12 (5) and 25-253.

The Commonwealth Transportation Board, the policy board charged with oversight of VDOT activities, has discretionary power under § 33.12 (5) to comply fully with the provisions of current or future federal aid acts, and § 25-253 authorizes all state agencies to promulgate rules and regulations necessary to carry out the provisions of § 25-235 et seq. (The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1972). Federal regulations and related federal law require that relocation services be provided to eligible recipients.

Since they primarily involve revising text order and content to improve clarity, or implement more efficient processes and procedures as permitted by federal law, the changes to the proposed replacement regulation do not exceed federal minimum requirements. However, federal law and state law do apply different maximum amounts for reestablishment expenses: \$10,000 (federal) vs. \$25,000 (state) and In Lieu of Payment: \$20,000 (federal) vs. \$50,000 (state). When necessary, the difference in allowable amounts will be made up from state funds.

The Office of the Attorney General (OAG) reviewed the proposed replacement regulation before the 2000 legislative session. As a result of this review, the OAG affirmed via correspondence dated October 29, 1999, that the Commonwealth Transportation Board has the statutory authority to promulgate the existing regulation (24 VAC 30-40-10 et seq.), and that the proposed regulation comports with applicable state and federal laws. When the existing regulation was amended during the spring of 2000 to accommodate changes in federal and state law, the OAG re-examined the parts of the replacement regulation affected by these changes. The OAG re-affirmed his prior opinion in correspondence dated April 14, 2000, that the replacement regulation comports with applicable state and federal laws.

Copies of the citations referenced above can be found via the following Internet sites:

Federal: http://www.access.gpo.gov/su_docs/

State: <http://leg1.state.va.us/lis.htm>

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not

acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

In acquiring the rights of way necessary for the construction, reconstruction, alteration, maintenance, and repair of the public highways of the Commonwealth, it often becomes necessary to displace individuals, families, businesses, farms, and non-profit organizations. The purpose of the replacement regulation is to permit VDOT to establish a uniform regulation concerning the prompt and equitable relocation and reestablishment of these displacees that is more streamlined, easier to understand and administer, and promotes efficiency. This regulation will ensure adequate relocation services and will provide moving, replacement housing, and other expense payments so that individuals will not suffer disproportionate injuries as a result of the highway improvement programs.

The proposed replacement regulation is intended to streamline certain procedures to improve operational efficiency and effectiveness. It revises and reformats text to make the policies and procedures more understandable to both displacees eligible for these services, as well as the VDOT personnel who will implement and interpret the regulation. Rather than a remedy to address one or more problems, the replacement regulation represents an example of VDOT's ongoing efforts to improve the quality and timeliness of its transportation services.

Therefore, VDOT believes that, in facilitating the provision of decent, safe, and sanitary facilities for families and businesses relocated due to highway projects, the proposed replacement regulation is essential to the protection of the health, safety, and welfare of the citizens, and is an essential part of VDOT's transportation functions.

The goals of the replacement regulation are:

- To comply with the requirements of federal and state law;
- To administer relocation services to displacees in a fair, impartial manner;
- To ensure that the provisions of the regulations are clearly understood by all participants;
- To receive satisfactory audit reports; and
- To protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

As a result of a comprehensive review of instructional manuals, memoranda, policies, and procedures used in the Right of Way and Utilities Division, VDOT proposes to replace the existing regulation with a substantially rewritten regulation that incorporates the following changes:

- Text has been reformatted and rewritten in a less legalistic way to facilitate understanding of the policies and procedures discussed;
- Examples of payment calculations have been added in sections relating to replacement housing to clarify procedures;
- Added and deleted or rewrote certain definitions;
- Revised policy on Relocation Appeals;
- Revisions to the process as permitted by 49 CFR Part 24 24.203 (c) (3) for sending vacating notices to displacees specified in § 24 VAC 30-40-300; this change will permit them to be received earlier, thereby providing more timely notification to displacees, and allowing VDOT to maintain more projects in an active status;
- Added “Self-Move” procedures for residential moves;
- Added policy on Section 8 Housing; and
- Creation of a Guidance Document to assist VDOT employees in interpreting the regulation;

VDOT will consider other changes to the regulation based on any input received during the external review, comment and public hearing periods.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term “issues” means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

Because the proposed regulation has revised existing provisions to improve the quality and timeliness of relocation services, affected persons and businesses will benefit from implementation of the new provisions of the regulation. Both VDOT personnel and those affected by the regulation will benefit from the proposed replacement regulation, which has sample calculations and is written in a less legalistic manner. These features will make the proposed regulation easier to administer and understand. Therefore, there will be no disadvantages to either the Commonwealth or the public in implementing the proposed replacement regulation.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency’s best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

VDOT's estimated annual expenditure for relocation services is approximately \$4,770,000. VDOT's funds come primarily from the Transportation Trust Fund (a non-general fund). The Virginia Transportation Act of 2000 for the first time made an appropriation of approximately \$545 million for highway projects, but this money will not be used in support of this regulation. Administrative costs to VDOT for the relocation services are approximately \$630,000 annually. The budget activity is Highway System Acquisition and Construction Program, the program number is 6030000, and the sub-programs are: 6030200; 6030300; 6030400; 6030700; and 6030900. The amendments from the replacement regulation are not expected to increase VDOT's costs for relocation services.

One-time costs include expenses to repeal the existing regulation and replace it with the replacement regulation. Based on typical costs for public hearings by VDOT's Location and Design Division, overall staff and administrative costs for a single public hearing to collect input for this regulation could range from \$1,500 - \$4,000, depending on the number of newspapers used, and the frequency of the ad. On-going costs include expenses to print copies of the manual, forms, etc., as well as training programs for field personnel who will administer the regulation. The regulation will be printed in-house, so there will be no outside printing costs.

The individuals, businesses, non-profit organizations, farms, and families affected by the regulation are those displaced by construction, reconstruction, alteration, maintenance, and repair of the public highways of the Commonwealth. VDOT previously estimated approximately 200 families or individuals and 75 businesses, non-profit organizations and farms will be affected annually.

However, any estimate of the number of affected parties is influenced by other factors, such as funding. The Commonwealth Transportation Board finalized a \$3.2 billion VDOT budget for the 2000-2001 fiscal year, the largest transportation improvement budget in Virginia's history. The budget represents a 22 percent increase in spending over last year's budget and includes a record \$1.7 billion for highway construction and a record \$1.05 billion for the highway maintenance program. Furthermore, Governor Gilmore and the General Assembly added \$3 billion to VDOT's Six-Year Improvement Program for transportation. As a result, over the next six years, Virginia will be spending more than \$10 billion for all modes of transportation, which raises the level of funding by almost 43 percent. Given this unprecedented level of funding, the number of displacees will likely increase as greater numbers of highway projects proceed to the advertisement stage.

The proposed replacement regulation will not affect how the regulation is funded, nor will it change the constituency of the regulated parties. It will affect the procedures regarding how payments are made, including timing. The estimated cost to administer the proposed replacement regulation will remain the same as the existing regulation.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by

the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

As a result of a comprehensive review of instructional manuals, memoranda, policies, and procedures used in the Right of Way and Utilities Division, VDOT proposes to replace the existing regulation with a substantially rewritten regulation. The proposed regulation has been rewritten to provide a document that is easier to read and understand, less legalistic language, provides additional information, examples of calculations, and a Guidance Document, all of which will make it easier for VDOT’s relocation staff to interpret and implement these regulations. The following is a list of substantive changes:

TABLE A – Explanation of Regulatory Changes

Existing regulation	Replacement regulation	Nature of change
Various sections	Part 1, 24 VAC 30-41-70	Reordered and consolidated references to Civil Rights and Equal Opportunity governing program services into single section at beginning after “Definitions.” In the existing regulation, Civil Rights and Equal Opportunity was referenced in several different sections. The replacement regulation has one section to cover all.
24 VAC 30-40-30	24 VAC 30-41-30	Revised list of “Definitions” to include additional information on some terms and move others to sections of the manual where definition is pertinent to discussion of policy; amended definition of “Persons who do not qualify as a displaced person” to include “A person determined to be not lawfully present in the United States” – Policy change due to change in federal law 49 CFR Part 24.2.
Part II, 24 VAC 30-40-40 through 150	24 VAC 30-41-30	Deleted entire Part II “Decent, Safe, and Sanitary Housing Standards” and made them a part of “Definitions.”
24 VAC 30-40-310	24 VAC 30-41-90	Added to “Final Appeal” the requirement that a “Court Reporter will be present to record and provide a transcript of all information presented at the hearing” should the case be heard in Court. This is a policy change recommended by the Attorney General’s Office. Also added a statement to advise the displacee of the

Existing regulation	Replacement regulation	Nature of change
		right to seek judicial review, which must be filed with the court within 30 days after receipt of the final appeal determination. This is existing policy which is being made a part of written policy at the recommendation of the Attorney General's Office.
24 VAC 30-40-500	24 VAC 30-41-270	Revision to Actual, Reasonable Moving Expenses to include a self-move – Policy change as permitted by 49 CFR Part 24.301. There is a need for this type of moving cost when the displacee chooses not to have a commercial mover and the fixed per room schedule is not a sufficient amount to cover the move.
N/A	24 VAC 30-41-430, 440, 450, 460, and 490	Examples of payment calculations have been added in sections relating to replacement housing in Part 8.
§ 24 VAC 30-40-300	24 VAC 30-41-160	Revisions to the process as permitted by 49 CFR Part 24 24.203 (c) (3) for sending vacating notices to displacees; this change will permit them to be received earlier, thereby providing more timely notification to displacees, and allowing VDOT to maintain more projects in an active status.
N/A	24 VAC-30-41-580	Added Section 8 housing requirements. This is not a policy change. This is an existing policy that is being added to VDOT policies and procedures.
Part VI, 24 VAC 30-40-1010 through 1170	Part 10, 24 VAC 30-41-590 through 640	Reduced number of sections addressing "Mobile Homes" from 17 to 6; redrafted part in terms of eligibility, requirements to receive payment, etc. No policy change or new regulations.
Part VII, 24 VAC 30-40-1180 through 1300	Part 11, 24 VAC 30-41-650 through 710	Reduced number of sections addressing "Last Resort Housing" from 13 to 6; redrafted part in terms of eligibility, requirements to receive payment, etc. No policy change or new regulations.
24 VAC 30-40-210 through 240	Part 12	More detailed identification of documentation requirements, including reports and audits, consolidated together.

Existing regulation	Replacement regulation	Nature of change
N/A	<i>Guidance Document for Determination of Certain Financial Benefits to Displacees</i>	Separate document to assist VDOT employees in interpreting the regulation for affected parties.

VDOT will consider other changes to the regulation based on any input received during the external review, and comment and public hearing periods.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

Since the regulations are based on federal and state law, there are no less burdensome or less intrusive means for achieving the essential purpose of the regulation. The proposed replacement regulation represents a means to minimize any burdens or intrusions on the affected parties. VDOT has an obligation to ensure that certain housing standards are maintained with respect to decent, safe, and sanitary requirements; it also must ensure that public funds are spent prudently. Therefore, a regulation is the best, least burdensome means of achieving these goals.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

VDOT received no public comment during the NOIRA period.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

VDOT has determined that the proposed replacement regulation is clearly written and easily understandable by the individuals and entities affected based in part on the following points:

- the lack of public comment specifically noting this deficiency during the NOIRA period;

- the efforts of a consultant who was hired to assist in re-drafting the regulation; and
- the results of an evaluation of the replacement regulation by VDOT personnel and personnel from the Federal Highway Administration.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

VDOT will review the regulation within three years of the effective date, and will specify that date when the final regulation is published in *The Virginia Register*. Based on current timetables, VDOT estimates the regulation will become effective during mid-2001, making a review due on or before mid-2004.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulation is not anticipated to affect the authority or rights of parents with respect to their children, nor is it anticipated to have any effects on the marital commitment or family income. However the regulation may have a positive effect on self-pride and the assumption of responsibility for oneself by ensuring that certain housing standards are maintained with respect to decent, safe, and sanitary requirements. In fact, depending on economic circumstances of specific affected families, this regulation could improve living standards.